

DoR – DCERP – P – Policy 8 – Fund Eligibility Determination – Eligibility Determination for Sites Applying for Access to the DCERP Fund

DISCLAIMER: This document is policy only, does not create legal rights or obligations, and does not constitute legal advice. Department decisions in any case will be made by applying applicable statutes and rules to the specific facts.

EFFECTIVE DATE: JANUARY 1, 2026

SIGNATURES:



Steve Sanders, Division Director



Payton Bradford, OGC Reviewer



Emily Greenwood, Drafter/Preparer

INTRODUCTION

The Drycleaner Environmental Response Program (DCERP) limits the DCERP Fund (Fund) resources to facilities that operated in compliance with the rules and regulations during their years of operation, as applicable. Per Tennessee Code Annotated section 68-217-105(a)(4)(B), the Commissioner may reject any petition and deny coverage under Chapter 217 if the Commissioner determines that the drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility has been in willful noncompliance with Chapter 217 or the rules enacted under this Chapter. In order to be considered eligible, persons wishing to apply for Fund access must adhere to the guidelines and procedures established in Tenn. Comp. R. & Regs. 0400-15-03-.05(4). This guidance is intended to assist applicants with how the Division of Remediation (Division) will evaluate these guidelines and procedures.

PROCEDURE

Upon receipt of an application, DCERP considers a facility's eligibility for Fund access based on the requirements set forth in Tenn. Comp. R. & Regs. 0400-15-03-.05(4). DCERP evaluates the criteria below to meet the requirements of Tenn. Comp. R. & Regs. 0400-15-03-.05(4):

DoR – DCERP – P – Policy 8 – Fund Eligibility Determination – Eligibility Determination for Sites Applying for Access to the DCERP Fund

Applicant

- 1) Tenn. Comp. R. & Regs. 0400-15-03-.02 defines “applicant” as a potentially eligible party who submits an application for entry to access the Fund and participation in DCERP for environmental response activities. The applicant must meet the definition of a current or prior owner or operator of an active or abandoned drycleaning facility, in-state wholesale distribution facility, or an impacted third party, as defined in Tenn. Comp. R. & Regs. 0400-15-03-.02. The following definitions should apply as set forth in Tenn. Comp. R. & Regs. 0400-15-03-.02:
 - a. “Owner” with respect to a facility, means the person who owns part or all of the real property of the facility.
 - b. “Operator” means any person or persons with the responsibility for operation of a drycleaning facility or in-state wholesale distribution facility or that has an ownership interest in the drycleaning operation or wholesale distributor.
 - c. “Wholesale distributor” means a person whose primary business is selling drycleaning solvents and supplies to in-state or out-of-state drycleaning facilities. Primary business means where the percentage of the person’s gross receipts from the sale of drycleaning solvents and supplies to such drycleaning facilities equals or exceeds 20% of total gross receipts.
 - d. “Impacted third party” means a lessor of real property on which a drycleaning facility or an in-state wholesale distribution facility is located, a property owner whose real property is adversely environmentally impacted by a release from a drycleaning facility or in-state wholesale distribution facility, or their predecessors, successors or assigns, mortgagees, predecessors-in-title, and successors-in-title.

Facility

- 2) Tenn. Comp. R. & Regs. 0400-15-03-.02 defines “facility” as an active or abandoned drycleaning facility or an in-state wholesale distribution facility. The facility must meet the definition of an abandoned or active drycleaning facility, or in-state wholesale distribution facility per Tenn. Comp. R. & Regs. 0400-15-03-.02. The following definitions should apply as set forth in Tenn. Comp. R. & Regs. 0400-15-03-.02:
 - a. “Abandoned drycleaning facility” means any real property premises or individual leasehold space on which a drycleaning facility formerly operated.

**DoR – DCERP – P – Policy 8 – Fund Eligibility Determination –
Eligibility Determination for Sites Applying for Access to the DCERP Fund**

- b. “In-state wholesale distribution facility” means a place of business located in this state of a wholesale distributor or any real property premises or individual leasehold space located in this state, occupied by an in-state wholesale distribution facility after June 13, 1995.
- 3) The facility must not be ineligible pursuant to Tennessee Code Annotated section 68-217-107(c).

Registration

- 4) Pursuant to Tennessee Code Annotated section 68-217-106 and Tenn. Comp. R. & Regs. 0400-15-03-.03, the facility must have been properly registered with DCERP each year during any active operations after June 13, 1995, and is documented to have paid all applicable registration fees, penalties, interest, and surcharges to be eligible for Fund access.
- a. To be considered properly registered per Tenn. Comp. R. & Regs. 0400-15-03-.03(3)(a) – (b) and Tenn. Comp. R. & Regs. 0400-15-03-.03(4)(a), the following criteria will be evaluated:
 - i. The applicant has submitted a complete and truthful registration form by February 1 of each operational year. The applicant should ensure documentation exists in DCERP’s files to prove payment and registration forms were provided or postmarked by February 1.
 - ii. The applicant has not been in violation of Tennessee Code Annotated section 68-217-108 and has paid all fees, penalties, interest, surcharges, etc. required and on time.
 - iii. The applicant has submitted required quarterly solvent logs, regardless of whether there were no solvent purchases per Tenn. Comp. R. & Regs. 0400-15-03-.03(6)(b).
 - iv. The applicant has not been in violation of Tenn. Comp. R. & Regs. 0400-15-03-.03(3)(e). Failure of the facility to receive registration paperwork/invoice from DCERP via mail is not justification to withhold payment of any registration fee or comply with applicable deadlines.
 - v. All available documentation not already provided must be submitted by the applicant to DCERP.
 - vi. Per Tenn. Comp. R. & Regs. 0400-15-03-.03(6)(c), the applicant has not failed to pay solvent surcharges by purchasing solvent through un-registered suppliers or other means, regardless of ownership at the time of violation.
 - vii. The applicant has not provided written justification explaining any discrepancy between solvent surcharges from suppliers that do not match the amount of solvent on the facility’s quarterly solvent logs.

DoR – DCERP – P – Policy 8 – Fund Eligibility Determination – Eligibility Determination for Sites Applying for Access to the DCERP Fund

- b. Abandoned facilities may lapse in their registration status; however, if there is not an ownership change and the applicant fails to register by February 1 of each year, the applicant will be removed from the Program, and a new application must be submitted to DCERP in order to be evaluated for Fund access. Additionally, the existing deductible status will reset, and the applicant, if considered eligible for Fund access, will owe 10% of each reimbursement request up to \$50,000 pursuant to Tenn. Comp. R. & Regs. 0400-15-03-.08(2)(b).

Best Management Practices (BMPs)

- 5) Pursuant to Tennessee Code Annotated section 68-217-105(a)(4)(B), applications to access the Fund may be denied if the Commissioner determines that the drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility has been in willful noncompliance with this chapter or the rules enacted under this chapter. Repeated BMP violations, as provided in Tenn. Comp. R. & Regs. 0400-15-03-.04, may be considered willful noncompliance and result in a denial of access to the Fund, regardless of ownership at the time of application.
- 6) Additionally, in accordance with Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(c), if applicable BMPs have not been implemented, the applicant will not be accepted into DCERP and will not be eligible for reimbursement of response costs other than the initial facility inspection. If the applicant corrects any deficiencies, the applicant may be accepted into DCERP and may be eligible for Fund reimbursement for any releases that the applicant can demonstrate, to the satisfaction of the Commissioner, to have occurred after the date the deficiencies were corrected. The applicant may request follow-up inspections after correcting deficiencies. However, all facility inspections subsequent to the initial facility inspection conducted at the applicant's request will not be Fund reimbursable.
- 7) There is not evidence in DCERP records of failure to implement applicable BMPs at a facility, as provided in Tenn. Comp. R. & Regs. 0400-15-03-.04.
 - a. Evidence may include:
 - i. A minimum of two documented BMP violations during a facility's operational history, regardless of ownership at the time.
 - ii. Documentation includes, but is not limited to, show cause meetings, inspection field forms, emails, letters, photographs, videos, or any other photographic or written correspondence regarding a BMP violation.

**DoR – DCERP – P – Policy 8 – Fund Eligibility Determination –
Eligibility Determination for Sites Applying for Access to the DCERP Fund**

- b. Documented BMP violations resulting in denial of Fund access may include, but not be limited to:
- i. Purchasing solvent from a supplier that does not collect solvent surcharge fees.
 - ii. Not having a spill contingency plan available for review.
 - iii. Solvent delivered in a manner where spills and releases during transfer could happen (not via closed loop).
 - iv. Removal of solvent should not be via pouring from open buckets or similar methods.
 - v. DCERP not notified of solvent transfer and a waiver letter not issued to the drycleaner owner and the selected supplier/waste transporter.
 - vi. Waste storage not handled appropriately (for both hazardous and non-hazardous waste):
 1. Filters, sludge, etc. containing drycleaning solvent must not be placed in a dumpster or other trash receptacle, on the ground, or in any location other than properly labeled storage containers compatible for the material.
 2. Hazardous waste documentation must provide evidence of proper disposal of all materials (liquid waste solvent, filters, sludge, etc.). If only one waste stream is documented to have been removed properly, it will be presumed that other waste streams have been disposed of in violation of this BMP.
 - vii. Filters, sludge, etc. containing drycleaning solvent must not be disposed of via sanitary sewer, storm sewer, septic tank, or any other underground structure which may result in a release.
 - viii. Waste can only be disposed of via licensed waste hauler.
 - ix. Copies of all hazardous waste, hazardous material shipping manifests, and bills of lading shall be maintained at the facility and made available to DCERP for review.
 - x. Waste records shall be kept for a minimum of five years. Failure to provide this documentation for review constitutes a violation of this BMP.
 - xi. Waste must be stored in labeled containers that are in good condition and compatible with the material in which it is stored.
 - xii. Waste containers must be located in an area of low traffic and in an area not easily accessible to the public (i.e., not stored unsecured behind the facility).
 - xiii. Waste containers must be in secondary containment.
 - xiv. Waste containers must be labeled and in good condition with tightly fitting lids.
 - xv. Spotting agents containing solvents must be stored in a manner to prevent a release and stored in secondary containment.

DoR – DCERP – P – Policy 8 – Fund Eligibility Determination – Eligibility Determination for Sites Applying for Access to the DCERP Fund

- xvi. Safety Data Sheets must be present for all drycleaning chemicals present at the facility and made available to DCERP or any other state or local entity upon request.
- xvii. Proper secondary containment for drycleaning machines must be present and documented to be in good condition and capable of holding the required amount of volume should a release occur.
- xviii. Secondary containment units for solvent and waste storage must be constructed of steel or polyethylene.
- xix. DCERP notified if a release greater than seven gallons occurred.
- xx. Floor drains not properly sealed.
- xxi. Each drycleaning facility shall be staffed by at least one person who is a Certified Environmental Drycleaner (CED) as certified by the Drycleaning & Laundry Institute or its successor, or has a certification deemed equivalent by the Commissioner to meet this requirement. In the event of termination of employment or loss of certification by the CED, the owner or operator of the facility has six months to replace the CED. A certified person shall be on-site at all times the drycleaning machine is in operation; at any time the drycleaning machine is being inspected, maintained, or repaired; and at any time solvent or filters are added to or removed from the drycleaning machine.
- xxii. Violation of any other applicable BMPs as identified in Tenn. Comp. R. & Regs. 0400-15-03-.04.

Facility Inspection

- 8) In accordance with Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(a)(7), an appropriate facility inspection must have been conducted for active facilities or abandoned facilities that DCERP determines need to be inspected. If required, Tenn. Comp. R. & Regs. 0400-15-03-.05(3) governs facility inspection requirements.

Closure

- 9) The facility must follow proper closure procedures as required in Tenn. Comp. R. & Regs. 0400-15-03-.04(3)(j). Documentation of closure and evidence of adherence to closure procedures must be provided to DCERP. Proper closure procedures include, but are not limited to:
 - a. If a drycleaning facility is to be closed or remain out of operation as a drycleaning facility, or if a drycleaning machine is not used for 90 days or more, solvent and solvent-containing material,

DoR – DCERP – P – Policy 8 – Fund Eligibility Determination – Eligibility Determination for Sites Applying for Access to the DCERP Fund

including all drycleaning waste, shall be properly removed from the facility and the machine. Within 90 days of ceasing operation, all solvent and waste, including filters, must be disposed of according to regulations. Solvent shall be pumped from any idled machine(s) either directly into another machine or into containers for transport or disposal. Solvent removal pumping activity shall be properly monitored by the facility's certificate holder.

- b. At least 10 days before removing the solvent or solvent-containing material from the drycleaning facility, the drycleaning facility shall notify the Commissioner in writing and obtain approval from DCERP.
- c. Within 30 days of removing the solvent and solvent-containing material from the facility in accordance with 9)a. of this document, the facility owner or operator shall send a notification to the Commissioner, on forms provided by the Commissioner, certifying the date and manner in which the facility was closed. Manifests and other documentation showing the disposition of the solvent, solvent-containing material, and waste shall be submitted with the letter.

General

- 10) The facility is not included in a site that has been accepted into the Tennessee Department of Environment and Conservation's (Department) Voluntary Cleanup Oversight and Assistance Program (VOAP) pursuant to Tennessee Code Annotated section 68-212-224.
- 11) Operational drycleaners, no matter what type of solvent is being utilized, are not eligible for VOAP entry per Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(a)(9).
- 12) Per Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(a)(10), the facility has not accrued costs or is not subject to a pending or final enforcement action pursuant to the Hazardous Waste Management Acts of 1977 or 1983, Title 68, Chapter 212. The Division considers enforcement actions "pending" at the time of investigation of potentially responsible parties at the facility.
- 13) The facility has not failed to comply with other requirements of Tenn. Comp. R. & Regs. Ch. 0400-15-03 or the Act in accordance with Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(a)(10).
- 14) Per Tenn. Comp. R. & Regs. 0400-15-03-.05(2)(b)(7), if the drycleaner operated after the onset of DCERP (June 13, 1995), the Commissioner requests the following records in order to be considered for access to the Fund. Additional records may be requested.

DoR – DCERP – P – Policy 8 – Fund Eligibility Determination – Eligibility Determination for Sites Applying for Access to the DCERP Fund

- a. Documentation of all solvent purchases or transfers;
- b. Waste disposal manifests (if applying less than 5 years from date of closure);
- c. Documentation of all equipment maintenance, repairs, or retrofits, including BMPs; and
- d. Documentation of all site investigation and cleanup plans and expenses.

IMPACTED THIRD PARTIES

Real Property Owner where the Facility is Located

- 15) In accordance with Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(d)(1), a real property owner where a drycleaning facility is or was located:
- a. Must not have had actual knowledge of the operator's failure to implement BMPs prior to the release.
 - b. Must not have failed to notify the Department within 60 days of the operator's failure.
 - c. Must have made a good faith effort to require the operator's compliance with applicable BMP requirements.
 - i. A good faith effort is considered at the first reasonable opportunity, to impose an obligation under the lease or other contractual agreement on the operator to comply with applicable BMPs.
 - ii. This can be documented in a sworn affidavit.
- 16) Per Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(d)(2), for facilities where the facility inspection or other documentation or investigation reveals that applicable BMPs have not been implemented, in order for an impacted third party who is the real property owner of the site to remain eligible for Fund reimbursement:
- a. The site must be an abandoned facility; or
 - b. The impacted third party must terminate the tenancy of the operator of the drycleaning facility.

Not the Owner of Real Property where the Facility is Located

- 17) In accordance with Tenn. Comp. R. & Regs. 0400-15-03-.05(4)(d)(4), an impacted third party that is not the owner of the real property on which the facility is located:
- a. Is not responsible for the failure to implement BMPs and need not cure such failure.

**DoR – DCERP – P – Policy 8 – Fund Eligibility Determination –
Eligibility Determination for Sites Applying for Access to the DCERP Fund**

- b. Upon application, the operator of the facility and the real property owner of the impacted third party’s application will be notified and provided with the opportunity to apply for access to the Fund within 30 days.
- c. If neither the operator of the facility nor the real property owner enters DCERP and corrects the deficiencies, activities may be initiated to evaluate the site under Tenn. Comp. R. & Regs. 0400-15-01-.01 Inactive Hazardous Substance Site Remedial Action Program.
- d. Eligibility for access to the Fund does not relieve the facility operator or the real property owner of the site from liability for any release under any other law or for third party claims, including without limitation, liability for reimbursement of response costs paid out of the Hazardous Waste Remedial Action Fund.
- e. If any deficiencies are either uncorrectable or not corrected within a time frame specified by the Commissioner, the applicant will be denied Fund access.

REVISION HISTORY TABLE

Revision Number	Date	Brief Summary of Change
0		Original Document